

EXHIBIT U

Civil Court of the City of New York

County of Kings
Part A

Index Number 303352/23
Motion Cal. # _____ Motion Seq. # 2

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers

Numbered

Notice of Motion and Affidavits Annexed..... NYSCEF 19-22
Order to Show Cause and Affidavits Annexed.....
Answering Affidavits 0
Replying Affidavits.....
Exhibits
Other.....

CIVIL COURT OF THE
CITY OF NEW YORK
JULY 12, 2024
ENTERED
KINGS COUNTY

Upon the foregoing cited papers, the Decision/Order on this Motion to _____

Petitioner commenced this nonpayment proceeding is as follows:
to recover possession of apt 20H @ 49-57 Crown St, Brooklyn
NY 11225. The recent demand and petition alleges that
\$60,448.01 is due through 12/2022. The recent demand
states that total rent sought is \$60,448.01 and total
miscellaneous charges are \$0. The rent demand is
accompanied by a "Detailed Charge + Arrears History Rider".
The Rider commences in 11/2019 and charges rent through
12/22. The rent demand shows that no payment have
been made from 11/2019 - 12/22. Respondent seeks dismissal
of this case based on a defective rent demand. Their
argument is two fold: a) rent demand does not show payment
of ~~\$ approx \$18,000~~ made by respondent for the months sought and b) the
the rent demand includes surcharges that are not

Date

Judge, Civil Court



TIVOLI BI LLC

Petitioner(s)

Decision/Order

-against-

Thelma Andrews

Respondent(s)

Hon. Agata E. Rumprecht-Behrens
Housing Court Judge

collectible on housing court. The court

A) Court notes that morant did not annex proof of payment but rather relies on a rent breakdown provided by petitioner (Exhibit A). Exhibit A clearly shows that multiple payments were made from 11/2019 - 4/2021. None of these payments are reflected on the rent demand. The \$18,000+ discrepancy is a large one. Petitioner did not oppose this motion despite several adjournments before for opposition. Purpose of the rent demand is to put a tenant on notice of the sum that the tenant has to pay to prevent litigation. See: 542 Holdings Corp. v. Prince Fashion, Inc., 46 AD3d 307 (1st Dept 2007.) Failure to demand such a good faith approximation renders the predicate notice defective. Dondy v. McAlpine, 27 Misc3d 138(A) (Ap Term 2nd Dept (2010))

Date: July 1, 2024

Hon. Agata E. Rumprecht-Behrens
Housing Court Judge

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The discrepancy here is over \$18,000. Such a large discrepancy cannot be said to be a "good faith estimate. Morant's payments + the excessive discrepancy would make it difficult to avoid litigation. A predicate notice cannot be amended. See Chouatour Apts v Chu Cholan 51 NY2d 786 (1980).

The predicate notice is defective as it is not a good faith approximation of amount due. Respondent seeks summary judgment / dismissal on this issue. In order to prevail on a ^{CPLR} 3212 motion, morant must show entitlement to a judgment ^{by admission} and that no issues of fact exist. Here, morant raised the issue of defect a predicate notice and respondent did not oppose it or raise any issues of fact. The motion is unavailing but the fact remains that

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a defective rent demand cannot be used to
~~set~~ maintain a nonpayment case. On a
summary judgment, the court is able to search
the record and grant the relief required even
if the issue is ~~not~~ see *Freidus v. Todem Homes Inc*
80 AD2d 575 (NY App Div. 20181)

Based on the above, ~~pet~~ respondents motion is granted
and the case is dismissed w/o prejudice. The
court does not need to reach the other issues
raised on the motion. Respondent is directed to
serve a copy of this Decision/Order with a
Notice of Entry on petitioner's counsel by NYSCEF
on or before 7/22/24.

This constitutes the Decision/Order of the
Court.

Date: July 1, 2024

Hon. Agata E. Rumprecht-Behrens
Housing Court Judge

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